

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DEREK MILLER,	§
	§
Defendant Below-	§ No. 427, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0610023116
Plaintiff Below-	§
Appellee.	§

Submitted: August 7, 2009  
Decided: August 27, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

**ORDER**

This 27th day of August 2009, it appears to the Court that:

(1) On July 28, 2009, the Court received appellant's notice of appeal from a Superior Court order, dated June 26, 2009, which denied appellant's motion to withdraw his guilty plea. Pursuant to Supreme Court Rule 6, a timely notice of appeal should have been filed on or before July 27, 2009.

(2) The Clerk issued a notice pursuant to Supreme Court Rule 29(b) directing appellant to show cause why the appeal should not be

dismissed as untimely.<sup>1</sup> Appellant filed a response to the notice to show cause on August 3, 2009. He asserts that he did not receive a copy of the Superior Court's order until July 6, 2009. Apparently, appellant is arguing that his untimely appeal should be allowed because of this alleged delay in his mail delivery.

(3) We disagree. Time is a jurisdictional requirement.<sup>2</sup> A notice of appeal must be received by the Office of the Clerk of this Court within the applicable time period in order to be effective.<sup>3</sup> An appellant's pro se status does not excuse a failure to comply strictly with the jurisdictional requirements of Supreme Court Rule 6.<sup>4</sup> Unless the appellant can demonstrate that the failure to file a timely notice of appeal is attributable to court-related personnel, his appeal cannot be considered.<sup>5</sup>

(4) In this case, appellant acknowledges receipt of the Superior Court's decision on July 6. He offers no explanation for why he did not timely file his notice of appeal by July 27. There is nothing in the record to substantiate appellant's suggestion that his failure to file a timely notice of

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<sup>1</sup>Del. Supr. Ct. R. 6(a)(i).

<sup>2</sup>*Carr v. State*, 554 A.2d 778, 779 (Del.), *cert. denied*, 493 U.S. 829 (1989).

<sup>3</sup>Del. Supr. Ct. R. 10(a).

<sup>4</sup>*Carr v. State*, 554 A.2d at 779.

<sup>5</sup>*Bey v. State*, 402 A.2d 362, 363 (Del. 1979).

appeal in this case is attributable to Superior Court personnel. Consequently, this case does not fall within the exception to the general rule that mandates the timely filing of a notice of appeal. Thus, the Court concludes that the within appeal must be dismissed.

NOW, THEREFORE, IT IS ORDERED, pursuant to Supreme Court Rule 29(b), that the within appeal is DISMISSED.

BY THE COURT:

/s/ Randy J. Holland  
Justice